

Elliott Flying Service, Inc. and District 118, International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 18-RC-13149

February 25, 1982

DECISION AND ORDER

**BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Curtis A. Wells. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the case was transferred to the National Labor Relations Board for decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in the case, the Board finds:

The Employer is an Iowa corporation engaged in Des Moines, Iowa, in the operation of an air charter and taxi service, as well as in the selling and servicing of Beechcraft aircraft, the training of pilots, the providing of pilots for owners of small aircraft, and the providing of fueling and emergency aircraft maintenance for Frontier Airlines. The record establishes that the Employer receives annual gross revenues in excess of \$500,000, and annually makes purchases of materials or services

valued in excess of \$50,000, directly from points located outside the State of Iowa.

The Petitioner contends that jurisdiction is properly with the National Labor Relations Board. The Employer, on the other hand, states on the record that it cannot stipulate that its operations are under the jurisdiction of the National Labor Relations Board since an issue exists as to whether the Employer is a common carrier by air engaged in interstate commerce within the meaning of the Railway Labor Act and, therefore, under the jurisdiction of the National Mediation Board.

Section 2(2) of the Act provides in pertinent part that the term "employer" as used in the National Labor Relations Act should not include any person subject to the Railway Labor Act.

Accordingly, because of the jurisdictional question presented here, we requested the National Mediation Board to study the record in this case and to determine the applicability of the Railway Labor Act to the Employer. In reply, we were advised by the National Mediation Board that, based upon its reading of the record, the board had concluded that:

The facts . . . establish that EFS [the Employer] is engaged in common carriage by air in interstate commerce within the meaning of Title II of the Railway Labor Act. The (National Mediation) Board is of the opinion that EFS is subject to the provisions of the Railway Labor Act.¹

In view of the foregoing, we shall dismiss the instant petition.

ORDER

It is hereby ordered that the petition in Case 18-RC-13149 be, and it hereby is, dismissed.

¹ *Elliott Flying Service, Inc.*, 9 NMB 47 (1981).